IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1112 of 2002

1. XL Finance
Rep. by K.Sivashanmugam

2. K.Sivashanmugam .. Appellants

-Vs-

State by: The Inspector of Police
Economic Offences Wing-II,
St. Thomas Mount,
Chennai 16. .. Respondent

This criminal appeal is preferred under S.374 of The Code of Criminal Procedure against the judgment of the Special Judge under TNPID (in F.Es) Act, Chennai made in C.C.No.10 of 2000 and dated 22.4.2002.

!For Appellants : Mr.T.S.N.Prabakaran

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate(Crl. Side)

:JUDGMENT

This is an appeal made by A-1 and A-2 in a case, wherein they along with three others stood charged under Ss 120(B), 420 and 403 of I.P. C. and Ss 4, 5 and 6 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act, and S.5 of the T.N.P.I.D. Act, and A-1 and A-2 were found guilty under S.5 of the TNPID Act and under Ss 4 and 5 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act, and A-1 was sentenced to pay a fine of Rs.70,000/- under S.5 of the TNPID Act and to pay a fine of Rs.1,000/- each under Ss 4 and 5 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act, while A-2 was sentenced to undergo 5 years R.I. under S.5 of the TNPID Act and to pay a fine of Rs.70,000/-, in default, to undergo 8 months S.I. and also to undergo 1 year R.I. under Ss 4 and 5 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act and to pay a fine of Rs.1,000/- each, in default to undergo 1 month S.I., and A-3 to A-5 were acquitted of the charges against them.
2. The gist of the prosecution case is as follows:
(a) The first accused was a finance Company conducted by the second accused as its Managing Director. The third accused was a partner in the said

business, while the fourth and the fifth accused were Manager and Cashier respectively. The second accused was conducting the chit transactions and also recurring and fixed deposit schemes in the name of the first accused. P.W.1 Manoharan, P.W.2 Murugesan, P.W.4 Dhanasekaran, P.W.5 Prabakaran, P.W.7 Ponnurangam, P.W.8 John Durai, P.W.9 Selvaraj, P.W.11 Yogaraj, P.W.12 Soloman, P.W.13 Shanmugam, P. W.14 Sathya, P.W.15 Balasubramaniam, P.W.16 Gunasekaran, P.W.17 Munusamy, P.W.18 Janarthanam and P.W.25 Manoharan were all depositors to the fixed deposit scheme conducted by the A-2 in the name of A-1. Exs.P253, P1, P5, P7, P8, P12, P13, P15, P16, P20, P22, P24, P26, P28, P3 0, P33, P35, P49 and P50 were all cheques and fixed deposit receipts respectively issued by the accused in that regard. Similarly, P.W.3 Venkatesan, P.W.6 Karunakaran, P.W.10 Kalaiselvam, P.W.19 Ramu, P.W.20 Ratinam, P.W.21 John Panchavarnam, P.W.22 Sivakumar, P.W.23 Arul Manickam, P.W.24 Lakshmanan, P.W.25 Manoharan, P.W.26 Selvaraj, P.W.27 Chandrasekaran, P.W.28 Rajkumar, P.W.29 Ramakrishnan P.W.30 Krishnan Kutty, P.W.31 Mani, P.W.32 Thirunavukkarasu, P.W.33 Ponnusamy, P.W.34 Ganesh, P.W.35 Rajkumar, P.W.36 Logan, P.W.37 Balasekar, P.W.38 Balasekaran, P.W.39 Sathyanarayanan, P.W.40 Jayakumar, P.W.41 Krishnamurthy, P.W.42 Vijayakumar, P.W.43 Perumal, P.W.44 Velayutham, P.W.45 Chithirai, P.W.46 Paulraj, P.W.47 Sundar, P.W.48 Sathyanarayanan, P.W.49 Arunachalam, P.W.50 Thangavelu, P.W.51 Rajaram, P.W.52 Thiagarajan, P.W.53 Subramani. P.W.54 Ranganathan, P.W.55 Subramani, P.W.56 Rajendran, P.W.57 Sankarasubbu, P.W.58 Mohanavelu, P.W.59 Koteeswaran, P.W.60 Nandagopal, P.W.61 Ramamurthi, P.W.62 Samuvel, P.W.63 Narendrababu, P.W.64 Mani, P.W.65, Palanisamy, P.W.66 Sivagurunathan, P.W.67 Ekambaram, P.W.68 Shanmugam, P.W.69 Rajendiran, P.W.70 Narasimman, P.W.7 1 Jeyaraman, P.W.72 Murali, P.W.73 Prathapkumar, P.W.74 Soundararajan, P.W.75 Rathinapandian, P.W.76 Subbiah, P.W.77 Nagarajan, P.W.78 Venkatesan, P.W.79 Pandian, P.W.80 Venugopalakrishnan, P.W.81 Damodaran, P.W.82 Jaganathan, P.W.83 Murugan, P.W.84 John Premkumar, P.W.85 Krishnan, P.W.87 Narendiran, P.W.88 Viswanathan, P.W.89 Jagadeesan, P. W.90 Manoharan,P.W.91 Chandrasekaran, P.W.92 Raghupathy, P.W.93 Balapathran, P.W.94 Abdullah, P.W.95 Mohanrajan, P.W.96 Sankaran, P.W.97 Thiagarajan, P.W.98 Ramamurthi, P.W.99 Gunasekaran, P.W.100 Rameshbabu, P101 Edward Raj, P.W.102 Sundarsingh, P.W.103 Arivalagan, P.W.104 Rajaram, P.W.105 Jeyaganesh, P.W.106 Annamalai and P.W.107 Murugesan were all subscribers to the chit transactions and recurring deposit scheme conducted by A-2 in the name of A-1 Company, and the cheques, chit passbooks and receipts issued by the Company in that regard are marked as Exs.P3, P10, P18, P37, P41, P39, P43, P45, P47, P51, P52, P5 4, P55, P57, P59, P61, P62, P64, P66, P67, P69, P71, P73, P75, P77, P79, P81, P83, P86, P88, P89, P91, P93, P95, P97, P100, P101, P103, P1 05, P107, P109, P111, P113, P114 to P118, P120, P122, P123, P125, P12 7, P.129, P131, P133, P135, P137, P139, P.140, P142, P143, P145, P147 , P.148, P150, P152, P154 to P158, P160, P162, P163, P165, P167, P169 , P171, P172, P174, P176, P178, P180, P182, P183, P185, P187 to P191, P193, P195, P197, P198, P201, P203, P205, P207, P209, P210, P.212, P214, P216, P218, P220, P222, P223, P225, P227, P229, P231, P232, P23 4, P235, P237 to P239, P243, P245, P247, P249 and P251 respectively.

(b) The second accused closed the business without returning the amounts collected from the above depositors and subscribers. The said depositors and subscribers have given complaints to the concerned police under Exs.P254, P2, P4, P6, P9, P11, P7, P17, P19, P21, P23, P25, P27, P29, P31, P34, P36, P38, P40, P42, P44, P46, P48, P53, P56, P58, P60, P63, P65, P68,

P70, P72, P74, P76, P78, P80, P82, P85, P87, P90 , P92, P94, P96, P98, P102, P104, P49, P106, P110, P112, P52, P121, P124, P126, P128, P130, P132, P134, P136, P138, P141, P144, P146, P149 , P151, P153, P159, P161, P164, P166, P168, P170, P173, P175, P177, P179, P181, P184, P186, P192, P194, P196, P199, P202, P204, P206, P208, P211, P213, P215, P217, P219, P221, P224, P226, P228,P230, P2 33, P236, P242, P244, P246, P248, P250 and P252 respectively.

(c) P.W.116 Dayanidhi, Inspector of Police, Economic Offences Wing, on the strength of Ex.P254 complaint given by P.W.1, registered a case in Crime No.3/2000 under Ss 409, 420 and 120(B) of I.P.C. and prepared Ex.P283 F.I.R. He examined the witnesses and recorded their statements. On the basis of the order of the Superintendent of Police, P.W.116 registered the case in Crime No.1/2000 and altered the case into Ss 409, 420 and 120(B) of IPC and Ss 3, 4 and 5 of T.N.P.I.D. Act, 1997 and prepared Ex.P274 F.I.R. The first accused Company was searched by P.W.116 in the presence of P.W.109 Raja. On 12.2.2000, he conducted search at the shops of the second accused and his wife Indhirani. He seized 29 movable properties and other documents from the XL Service Centre run by A-2 and A-3. He also seized 16 movable properties from the XL Finance. He arrested A-2 in the presence of P.W.110 Meganathan and the other witness Loganathan. He recorded the confessional statement voluntarily given by A-2. From the residence of the daughter of A-2 namely Kamala, he seized 7 gold ornaments under Ex.268 mahazar. From the residence of another daughter of A-2 he recovered 7 gold ornaments under Ex.P270 mahazar. He arrested the fourth accused on 12.2.2000. On 13.3.2000, he arrested the third accused. He sent the arrested accused for judicial custody. He seized the rental advance amount of Rs.5,000/- given by the second accused to the owner of the premises, where the said XL Finance was run by the accused, under Ex.P271 mahazar. He seized Rs.40,000/- to be given to the second accused by P.W.115 Bharath, under Ex.P272 mahazar. He also seized the rental advance of Rs.2,10,000/- given by A-2 to P.W.111 Indhumathi in the presence of witnesses Vijayakumar and Durairaj under Ex.P275 mahazar. Since P.W.116 was transferred, he handed over the investigation to P.W.117 Ebinezar. P.W.117 took up further investigation and examined the witness Kumar and recorded his statement. On completion of investigation, P.W.117 laid a charge sheet against the accused under Ss 409, 420 and 120(B) of I.P.C. and Ss 4, 5 and 6 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act and S.5 of the T.N.P.I.D. Act. He received the complaints given by the witnesses Iyyappan, Nagamani, Premanand, K.R.Devarajan and Merlin Issac and submitted the altered final report on 16.11.2000 under Ex.P117.

3. In order to prove its case, the prosecution has examined 117 witnesses and marked 275 exhibits. After the completion of the prosecution evidence, the accused were questioned under S.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. One P.S.Ranganathan, Manager, Indian Bank was examined as D.W.1, while the second accused was examined as D.W.2, and 4 exhibits were marked. On hearing both sides and making scrutiny of the available materials, the trial Court found the appellants/accused guilty for the said offences and sentenced them as stated supra. Against the finding of the trial Court, the appellants/A-1 and A-2 have brought forth this appeal.

4. At the time of the arguments, the learned Counsel for the appellants made the following submissions for the consideration of this Court: Out of 236 alleged depositors, there were no legal evidence from 119

depositors because only 117 witnesses were examined, out of whom 107 were projected as victims before the lower Court. The prosecution has not adduced any reason for the non-examination of the other witnesses. Hence, the trial Judge should have accepted the defence version that they were fictitious persons, and they were sited as witnesses only to exaggerate the prosecution story. The alleged deposit amounts were shown very excessive i.e. Rs.14,29,333/-. But, per the legal evidence available before the trial Cour, the appellants/accused were liable to pay only a sum of Rs.6,59,772/-. A perusal of the complaints would clearly reveal that even as per the admitted version of the prosecution, 26 complaints were premature complaints. Number of witnesses have admitted during trial that they longed complaints even before the maturity of the fixed deposits. It has to be noted that P. Ws.28, 39, 43, 61, 68, 85 and 86 have clearly deposed before the trial Court that there were no dues to them from the appellants/accused. It is pertinent to point out that P.Ws.32, 40, 88, 90, 95, 99, 100, 1 03 and 105, even according to their evidence, have not completed the monthly subscription. As per the agreement entered into between the parties, they should wait till the completion of 41 months, and thus, the complaints given by them were premature. The Investigating Officer at the time of investigation has taken the spare parts worth about Rs.9,54,000/-, and in that regard, D.W.1, the Bank Manager, Indian Bank, Alwarpet Branch, has clearly deposed before the trial Court that he verified the same a couple of days before the seizure, and thus, the assets of the appellants are lying with the Court, which would be Rs.13,43,937.60, whereas the appellants were liable to pay as per the legal evidence only a sum of Rs.6,59,772/-. Under such circumstances, the lower Court without proper appreciation of evidence, has come to the conclusion that they have committed the offences, and thus, the appellants/accused are entitled for an acquittal in the hands of this Court.

5. Opposing strongly the above contentions, the learned Government Advocate (Criminal Side) would submit that the first accused was a financial institution being run by the second accused; that the third accused was the wife of the second accused, and the fourth and fifth accused are Cashier and Manager of the said institution respectively; that the lower Court on appreciation of evidence has acquitted A-3 to A-5; that it is not in dispute that number of witnesses examined before the lower Court have made their subscription towards the chit transactions; that apart from that, under fixed deposit scheme, they have also deposited the amounts; that from the evidence available, it would be clear that even after the maturity of the deposit vouchers and the chit transactions, A-1 and A-2 have not made the repayment of the amounts borne by them; that the contention of the appellants' side that the complaints were lodged even before the maturity of the period has been rightly rejected by the lower Court since the business itself was closed without making any payment whatsoever, and under such circumstances, the complainants were constrained to lodge the complaints before the concerned police, who in turn registered a case and proceeded with the investigation, and thus, by sufficient and overwhelming evidence, the prosecution has proved its case, and hence, the lower Court's judgment has got to be sustained.

6. Admittedly, A-1 a financial institution was run by A-2, and A-1 institution was running the chit transactions and the scheme of fixed deposit also. By adducing sufficient evidence through P.Ws.1 to 85 and 87 to 107, the prosecution has proved that A-2 has collected moneys from them towards the

chit transactions and also for the recurring and fixed deposit schemes also. The documents issued by the accused to them in that regard, have been produced before the trial Court and marked as Exs.P1, P3, P5, P7, P8, P10, P12, P13, P15, P16, P18, P20 , P22, P24, P26, P28, P30, P32, P33, P35, P37, P39, P41, P43, P45, P4 7, P49, P50, P51, P52, P54, P55, P57, P59, P61, P62, P64, P66, P67, P69, P71, P73, P75, P77, P79, P81, P83, P84, P86, P88, P89, P91, P93, P95, P97, P99, P100, P101, P103, P105, P107, P109, P111, P113, P114 to P116, P119, P120, P122, P123, P125, P127, P129, P131, P133, P135, P137, P139, P140, P142, P143, P145, P147, P148, P150, P152, P154 to P1 58, P159, P160, P162, P163, P165, P167, P169, P171, P172, P174, P176, P178, P180, P182, P183, P185, P187 to P191, P193, P195, P197, P198, P200, P201, P203, P305, P207, P209, P210, P212, P214, P216, P218, P22 0, P222, P223, P225, P227, P229, P231, P232, P234, P235, P237 to P241 , P243, P245, P247, P249, P251 and P253. From the evidence of the witnesses, it would be abundantly clear that even after the maturity of the fixed deposit and the expiry of the period under the chit transactions, payments were not made, and hence, the complaints were lodged, which resulted in the prosecution against the accused. That apart, there is available evidence to show that the financial institution run by A-2 in the name of A-1 was abruptly closed, and thus, there arose a necessity for the depositors and subscribers to initiate proceedings against them. Under such circumstances, the contention of the appellants' side that they should have waited till the completion of the period found under the chit transactions and the fixed deposit scheme, but they have initiated proceedings before that, and the same would be premature cannot be countenanced.

7. The available evidence would go to show that during the currency of the chit transactions and the fixed deposit scheme even before maturity, the business itself was closed, and in such circumstances, the public is not expected to wait till the period is over, and hence, the complaints lodged by the depositors and subscribers were perfectly correct in the eye of law. In pursuant of the said complaints, the investigation was taken up and procedurally done. In view of these reasons, the Court is unable to appreciate all or any one of the contentions put forth by the appellants' side as stated above. The lower Court was perfectly right in finding the appellants/A-1 and A-2 guilty under S.5 of the TNPID Act and under Ss 4 and 5 of the Tamil Nadu Prize Chits and Money Circulation Scheme (Banning) Act. The conviction recorded by the lower Court has got to be sustained.

8. Coming to the question of punishment, the lower Court has sentenced A-1 to pay the fine amounts as stated above. The Court does not find anything to interfere in the said sentence. So far as A-2 was concerned, the lower Court has awarded 5 years R.I. under S.5 of the T.N.P.I.D. Act. Taking into consideration the facts and circumstances of the case, the sentence of 5 years R.I. imposed by the lower Court on A-2 has got to be reduced to 4 years R.I.

9. In the result, the sentence of R.I. for 5 years imposed by the lower Court on A-2 under Sec.5 of the T.N.P.I.D. Act is modified, and A-2 shall undergo R.I. for 4 (four) years. In other respects, the judgment of the lower Court is confirmed. The Sessions Judge shall take steps to commit A-2 to prison, if he is on bail, to undergo the remaining period of sentence. With the above modification, this criminal appeal is dismissed.

Index: Yes
Internet: Yes

To:

1) The Special Judge under TNPID (in F.E.) Act, Chennai
2) The Principal Judge, Chennai.
3) The Superintendent, Central Prison, Vellore.
4) The Public Prosecutor, High Court, Madras.
5) The D.I.G. of Police, Chennai 4.
6) Mr.V.Jaya Prakash Narayanan, Government Advocate
(Crl. Side), High Court, Madras.
7) The Inspector of Police, Economic Offences Wing II
St. Thomas Mount, Chennai 16.

nsv/